


4/18/08

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
March 20, 2008**

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on March 20, 2008.



W. Scott Phillips, Chair
Environmental Management Commission

Certified this 18th day of April 2008.

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
March 20, 2008

Convened: 9:10 a.m.
Adjourned: 9:43 a.m.

Part A

Transcript

Part B

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Attachment 1

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Part A

ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING

Alabama Department of Environmental
Management Building
Alabama Room (Main Hearing Room)
1400 Coliseum Boulevard
Montgomery, Alabama

March 20, 2008 9:00 a.m.

COMMISSION MEMBERS PRESENT:

W. SCOTT PHILLIPS, CHAIR
DR. LAUREL G. GARDNER,
VICE-CHAIR
SAM H. WAINWRIGHT, P.E.
MS. ANITA L. ARCHIE

COMMISSION MEMBERS NOT PRESENT:

DR. KATHLEEN J. FELKER
KENNETH A. HAIRSTON, ESQUIRE
DR. JOHN H. LESTER

ALSO PRESENT:

ONIS "TREY" GLENN, III,
ADEM DIRECTOR

ROBERT TAMBLING, LEGAL COUNSEL

DEBI THOMAS,
EXECUTIVE ASSISTANT

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<p>1 INDEX</p> <p>2 Page</p> <p>3 Opening Remarks by 3 Commissioner Phillips</p> <p>4</p> <p>5 Consideration of Minutes of 6 Meeting held on December 14, 7 2007 3</p> <p>8 Report from Director Glenn 4</p> <p>9</p> <p>10 Report from Commissioner 11 Wainwright 13</p> <p>12</p> <p>13 Final Director's 2007 14 Performance Evaluation 14</p> <p>15 Proposed Amendments to 16 Division 6 -- Underground 17 Storage Tank Regulations 18</p> <p>18 ADEM Administrative Code Chapter 19 335-6-10, Appendix A (Reference 20 Doses) 27</p> <p>21 Black Warrior Riverkeeper, Inc., 22 v. ADEM and Birmingham Airport 23 Authority, Intervenor -- EMC Docket Nos. 07-08, 07-09, and 07-10 29</p> <p>John Jordan, Sr. and John Jordan, Jr., d/b/a Alabama Recycling v. ADEM -- EMC Docket No. 08-03 29</p> <p>Other Business 42</p> <p>Future Business Session 42</p> <p>Meeting Adjourned 44</p>	<p>1 MR. PHILLIPS: All opposed 2 same sign.</p> <p>3 (No response.)</p> <p>4 MR. PHILLIPS: Motion carries. 5 We'll move to Agenda Item 6 Number 2, report from the Director. 7 Mr. Director.</p> <p>8 MR. GLENN: Commissioners, 9 thank you and good morning. Again -- 10 once again, I appreciate the 11 opportunity to stand before you and 12 present this report. 13 Jumping right in on a 14 couple of administrative issues. You 15 should have received a memo from me 16 last month regarding potential 17 rulemaking the Department may enter 18 into in the coming months, as well as 19 a memo from me outlining recently 20 executed contracts that the Department 21 has entered into. 22 Regarding our budget, we 23 continue to be on track this year with</p>
Page 3	Page 5
<p>1 MR. PHILLIPS: Good morning. 2 We're going to call this meeting of 3 the Environmental Management 4 Commission to order. We acknowledge 5 that we have a quorum this morning. 6 Go to Agenda Item 7 Number 1, which is a consideration of 8 the minutes of the meeting held on 9 December the 14th, 2007. 10 I'll entertain a motion 11 from the Commission for the adoption 12 of those minutes. 13 DR. GARDNER: So moved. 14 MR. WAINWRIGHT: Second. 15 MR. PHILLIPS: I have a motion 16 and a second. Is there any 17 discussion? 18 (No response.) 19 MR. PHILLIPS: No further 20 discussion. All in favor of the 21 motion signify by signing aye. 22 (Commission members in favor of 23 the motion so indicated.)</p>	<p>1 our expenditures and our revenues as 2 projected, and I feel very confident 3 that we have an effective plan in 4 place to deal with the challenges that 5 this year brought with it. So 6 everything is on track. 7 Now, to External Affairs. 8 I'd like to highlight three quick 9 things. First, I'm pleased to 10 announce that on May 22 of this year 11 here in Montgomery, ADEM will be 12 hosting the first ever General 13 Regulatory Overview conference. It 14 will be at the new Renaissance 15 Conference Center. 16 Also in the area of 17 External Affairs, we held -- between 18 last meeting and this meeting, we held 19 the session -- excuse me, 20 environmental roundtable discussion. 21 Dr. Gardner was present. 22 We appreciate your 23 presence and participation in that.</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1 Unfortunately, the 2 meeting was not very well attended. 3 However, in spite of that, we did 4 continue to make progress toward the 5 objective of understanding each 6 other's interests and positions 7 combined with the goals and mission of 8 ADEM and whether there may be some 9 commonality in some areas for further 10 collaboration. 11 Also since last meeting 12 to this one, I've had the opportunity 13 to meet with leadership of the Reform 14 Coalition. We met and I had the 15 opportunity to relate ongoing 16 activities at ADEM to some of the 17 elements that are called for in their 18 strategic plan. Dr. Gardner was also 19 able to attend that -- that meeting. 20 Quickly, on the 21 legislature. As you know, the 22 legislature is in town. There's two 23 main items to focus on; first is the</p>	<p style="text-align: right;">Page 8</p> <p>1 programs -- and by that I mean our 2 main line NPDES program such as 3 Municipal and Industrial as well as 4 our Construction Stormwater, Mining, 5 CAFO/AFO and other related programs -- 6 have been spread over -- over 7 different divisions and different 8 areas. 9 But now that all of these 10 programs have reached a certain level 11 of maturity, it's now time to take 12 advantage of the opportunity to 13 combine some of these programs along 14 functional lines into a much more 15 streamlined organizational group. Let 16 me -- I figure the quickest way I can 17 do this was to explain it to you in 18 writing here. 19 Historically, we have had 20 an Industrial section, a Municipal 21 section -- Construction, Municipal, 22 and a Mining and Nonpoint Source 23 section located over in our Field</p>
<p style="text-align: right;">Page 7</p> <p>1 general fund budget. That's not a 2 very active issue right now for -- for 3 us, but it is important to note that 4 the executive budget as introduced did 5 include a fairly substantial cut to 6 ADEM. It proposed to move us back to 7 the 2007 level. So we'll be 8 continuing to monitor that and be 9 engaged in that at the appropriate 10 time. 11 Onto some very good news. 12 As called for in the Strategic Plan 13 and other plans, we're pursuing the 14 Solid Waste and will turn into now a 15 recycling bill for the State of 16 Alabama. And I'm pleased to announce 17 that last week that bill made it out 18 of Committee, and we'll hope -- 19 hopefully see some additional movement 20 on that next week. 21 Now, onto the main topic 22 that I wanted to discuss with you. As 23 you know, historically our water</p>	<p style="text-align: right;">Page 9</p> <p>1 Operations Division and our Water 2 Division. Each has been responsible 3 for the permitting on -- and 4 enforcement functions associated with 5 their regulated entities and likewise 6 over here. 7 If you consider the 8 current model that we're implementing 9 now at ADEM, it's along -- designed 10 along functional lines where we have a 11 permitting branch that would be led by 12 Glenda Dean. I think y'all met Glenda 13 before. They'll be responsible for 14 permitting for these programs. 15 She will work side by 16 side with Chip Crockett, who is 17 sitting beside Glenda back there, who 18 will be responsible for making timely 19 and appropriate enforcement decisions 20 and executing those decisions. In our 21 Field Operations Division, they will 22 be responsible for the majority of 23 the compliance evaluations.</p>

3 (Pages 6 to 9)

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1 Fieldwork. Where we have them plug
 2 this information so that they can then
 3 report that back to this group so that
 4 timely and appropriate enforcement
 5 decisions can be made.
 6 This structure that we're
 7 putting in place will clearly enhance
 8 our efficiency, consistency, along
 9 these functional lines and allow us
 10 better accountability and cost control
 11 and cost management; bottom line, to
 12 be more effective in what we do.
 13 In addition to these
 14 changes, we have moved the UST Program
 15 from the Water Division to the Land
 16 Division. And also I've transferred
 17 and will be expanding the role of the
 18 quality assurance group that was
 19 previously housed in the Field
 20 Operations Division.
 21 It will move to the
 22 Office of the Director. This will
 23 allow us to implement the three-tiered

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1 ADEM, and, particularly, the Aerial
 2 Program has been a focus.
 3 Obviously this program is
 4 a major asset to -- for the programs
 5 that are undergoing these significant
 6 changes that I've referenced on the
 7 board. Part of the changes will
 8 include an enhancing of the protocol
 9 associated with how we use all of our
 10 resources, including this -- this
 11 program.
 12 This comes at a good
 13 time, because in -- in other words, in
 14 an effort to enhance our program as
 15 well as a followup of conversations
 16 that I've had with many of you,
 17 particularly with Commissioner Archie,
 18 we'll begin a new method of tracking
 19 and reporting data associated with
 20 aerial reconnaissance missions. This
 21 will allow us a very clear
 22 after-the-fact look at what was
 23 accomplished on these missions.

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1 quality approach I've at least
 2 mentioned to or had a chance to
 3 discuss in detail with each of you.
 4 And that is, number one, program level
 5 protocols and controls implemented
 6 within the program on a day-by-day
 7 basis that, accompanied with some
 8 auditing and accountability functions
 9 performed by this quality assurance
 10 group, that will function in the
 11 Office of the Director. And then
 12 there will also be an added layer,
 13 which will be my personal involvement
 14 and that of my senior staff on very
 15 specific, individual audits and
 16 reviews of actions as they're taken
 17 here at ADEM.
 18 Lastly, I appreciate your
 19 continued interest and support in the
 20 technology-based efficiencies that the
 21 Department is implementing and, of
 22 course, with the strategic and the
 23 ongoing challenges and needs here at

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1 Once again, I thank you
 2 for the opportunity to stand before
 3 you in this role. I appreciate
 4 serving Alabama with you. I'll be
 5 happy to answer any questions that you
 6 might have.
 7 MR. PHILLIPS: Thank you,
 8 Mr. Director.
 9 Do we have any questions
 10 from the Commission?
 11 (No response.)
 12 MR. PHILLIPS: Thank you very
 13 much.
 14 Moving to Agenda Item
 15 Number 3, report from the Commission
 16 Chair.
 17 I don't have anything to
 18 report at this meeting. If you have
 19 any questions of me, I will be more
 20 than happy to answer them.
 21 (No response.)
 22 MR. PHILLIPS: Move to Agenda
 23 Item Number 4.

4 (Pages 10 to 13)

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1 Chairman Wainwright, I'm
 2 going to ask you to provide the
 3 Personnel Committee with a report.
 4 MR. WAINWRIGHT: Mr. Chairman,
 5 the Personnel Committee met on
 6 February the 8th and reviewed the
 7 personnel -- the Director's review
 8 document that each of the
 9 Commissioners filled out and provided
 10 to the Committee. We prepared a
 11 summary of the -- of the seven
 12 reviews. And at this point in time we
 13 want to present that information to
 14 the full Commission.
 15 We have a motion -- we
 16 have actually two motions. The motion
 17 -- one motion to receive the
 18 Director's evaluation form and the
 19 summary.
 20 MR. PHILLIPS: Are you making
 21 that motion?
 22 MR. WAINWRIGHT: Yes.
 23 MR. PHILLIPS: Do I have a

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1 understanding or understanding between
 2 you and the Director regarding the
 3 results of these -- these evaluation
 4 forms.
 5 MR. PHILLIPS: I have a motion
 6 to authorize the Chair to review the
 7 results of the evaluation forms. Do I
 8 have a second?
 9 MS. ARCHIE: Second.
 10 MR. PHILLIPS: I have a motion
 11 and a second. Any discussion?
 12 (No response.)
 13 MR. PHILLIPS: No discussion.
 14 All in favor signify by signing aye.
 15 (Commission members in favor of
 16 the motion so indicated.)
 17 MR. PHILLIPS: All opposed
 18 same sign.
 19 (No response.)
 20 MR. PHILLIPS: Motion carries.
 21 DR. GARDNER: Mr. Chairman.
 22 MR. PHILLIPS: Dr. Gardner.
 23 DR. GARDNER: I just had some

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1 second for motion?
 2 DR. GARDNER: Second.
 3 MR. PHILLIPS: I have a motion
 4 and a second to receive the Director's
 5 evaluation --
 6 MR. WAINWRIGHT: Forms and the
 7 summary.
 8 MR. PHILLIPS: Any discussion?
 9 (No response.)
 10 MR. PHILLIPS: No discussion.
 11 All in favor of the motion signify by
 12 signing aye.
 13 (Commission members in favor of
 14 the motion so indicated.)
 15 MR. PHILLIPS: All opposed
 16 same sign.
 17 (No response.)
 18 MR. PHILLIPS: Motion carries.
 19 MR. WAINWRIGHT: The second
 20 motion would be a motion to authorize
 21 you to review these forms or the
 22 results of these forms with the
 23 Director and to execute the letter of

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1 concerns about the form, itself, as I
 2 was going through it once we actually
 3 began using the evaluation form.
 4 There is just some things on there
 5 that I thought might benefit from some
 6 tweaking.
 7 I'd like to make a motion
 8 we send that form back to Committee
 9 for review -- further review and
 10 evaluation and by our August meeting
 11 have a second look at it.
 12 MR. PHILLIPS: Okay. I have a
 13 motion to send the forms back. What
 14 about the overall process?
 15 DR. GARDNER: And also look at
 16 the overall process.
 17 MR. PHILLIPS: So refer to the
 18 Committee to -- to look at our process
 19 that we used in this last review cycle
 20 and the forms and bring those back to
 21 the Commission in August with any
 22 recommendations for changes or
 23 modifications.

5 (Pages 14 to 17)

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1 I have that motion --
 2 MR. WAINWRIGHT: Mr. Chairman,
 3 I don't believe we need any motion;
 4 just instructions from the --
 5 MR. PHILLIPS: Then we'll
 6 refer it back to you to take back to
 7 the Chair of the Committee for us.
 8 I'll also talk to
 9 Dr. Lester so I'll also mention that
 10 to him.
 11 MR. WAINWRIGHT: Okay.
 12 MR. PHILLIPS: I'd like to
 13 thank the Committee for your work.
 14 Moving to Agenda Item
 15 Number 5, which is consideration of
 16 the adoption of proposed amendments to
 17 Division 6, Underground Storage Tank.
 18 I call on the Department
 19 for comments.
 20 MR. HARDY: Good morning. My
 21 name is Gerald Hardy, and I'm Chief of
 22 the Land Division here at ADEM.
 23 You have before you for

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1 non-compliance; two, been given
 2 specific written notice that failure
 3 to correct the noncompliance within a
 4 specified time frame will result in
 5 delivery prohibition; and, three, been
 6 given an opportunity for a meeting
 7 with the Department staff to discuss
 8 the compliance status of their
 9 facility.
 10 Implementation of these
 11 requirements will be primarily through
 12 notice given through a delivery
 13 prohibition list posted on the ADEM
 14 website. This list will be updated
 15 weekly with any new facilities which
 16 are to be added. The Department will
 17 remove a facility from delivery
 18 prohibition upon submission of
 19 documentation that the noncompliance
 20 has been corrected.
 21 Written notice of release
 22 from delivery prohibition will be
 23 provided to the owner or operator

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1 consideration proposed regulations
 2 which are necessary to implement the
 3 Underground Storage Tank program
 4 requirements of the Federal Energy
 5 Policy Act of 2005.
 6 This set of proposed
 7 regulations will provide the
 8 Department with the authority to
 9 prohibit deliveries to underground
 10 storage tank facilities which have
 11 failed to comply with the regulatory
 12 requirements for underground storage
 13 tanks. The proposed regulations will
 14 also make it unlawful for anyone to
 15 make a delivery to an underground
 16 storage tank facility that has been
 17 placed under delivery prohibition.
 18 Prior to a facility being
 19 placed under delivery prohibition, the
 20 owner or operator would have, one,
 21 received repeated written notices from
 22 the Department regarding the
 23 requirement to correct the

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1 through e-mail or fax in addition to
 2 the regular mail. Delivery companies
 3 will also receive an e-mail indicating
 4 that the facility has been removed
 5 from delivery prohibition.
 6 I will be glad to answer
 7 any questions you may have.
 8 MR. PHILLIPS: Thank you.
 9 Do we have any questions
 10 from the Commission?
 11 MR. WAINWRIGHT: I have some,
 12 Mr. Chairman.
 13 MR. PHILLIPS: Mr. Wainwright.
 14 MR. WAINWRIGHT: This seems to
 15 me like an awful lot of power to the
 16 -- given to the agencies. It gives
 17 you the ability to padlock a business
 18 more or less. I'm concerned is --
 19 where -- what precipitated this?
 20 MR. HARDY: This is
 21 precipitated from EPA and the federal
 22 government. This was -- as I said,
 23 this was included in energy -- the

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 Federal Energy Policy Act passed by 2 congress in 2005 that required a 3 number of actions for underground 4 storage tank operators, including the 5 requirement that all be -- every one 6 be inspected at least once every three 7 years. It mandated or required the 8 states to adopt the delivery 9 prohibition regulations. 10 If the states do not, 11 then EPA plans to adopt its own set of 12 regulations that will ban deliveries 13 to facilities or tanks that are not in 14 compliance. So this is our move to 15 maintain primacy with the requirements 16 of the EPA. 17 MR. WAINWRIGHT: But it's -- 18 this is really -- it's aimed at fuel 19 retailers. 20 MR. HARDY: It's aimed at fuel 21 retailers. You know, to continue the 22 delivery of shipments of gasoline to a 23 tank that's leaking, because it hasn't</p>	<p style="text-align: right;">Page 24</p> <p>1 everything corrected, we could still 2 allow delivery to the hospital because 3 it would be to protect human health 4 and the environment. And most of 5 those are really for emergency 6 stand-by's not for routine regular 7 consumption. 8 MR. WAINWRIGHT: Well, is that 9 differentiated? 10 MR. HARDY: That provision is 11 in our regs, yes. 12 MR. WAINWRIGHT: You say in 13 here something like designated time 14 period. It doesn't define the time 15 period. It leaves it up to y'all to 16 designate. It also says regulated 17 substances. Does this not -- does 18 this apply to other things besides 19 fuel, other chemicals? 20 MR. HARDY: Well, one of the 21 things we've been getting into is what 22 mixture of ethenol in gasoline becomes 23 regulated. And so that -- so that</p>
<p style="text-align: right;">Page 23</p> <p>1 demonstrated that it's -- that passes 2 leak detection, continues to 3 contaminate out the environment and 4 our drinking water supplies. 5 MR. WAINWRIGHT: I -- I have 6 no objection to that. But it's the 7 other end users that I'm concerned 8 with, such as hospitals, nursing 9 homes -- other end users that it could 10 impact the public. 11 MR. HARDY: Well, as I 12 indicated, this is not -- will not be 13 a snap decision. We will -- they will 14 be provided plenty of opportunity that 15 they're not in compliance, afforded 16 the opportunity to meet and discuss. 17 And even if all that 18 happens, you know, we have the ability 19 to pull someone off of delivery 20 prohibition if it's to protect human 21 health. So in the case it was a 22 hospital that for whatever reason 23 couldn't get their act together, get</p>	<p style="text-align: right;">Page 25</p> <p>1 anything that's considered fuel to 2 include -- are now gasohol. Ethenol 3 blends are also included because 4 they're regulated. 5 MR. WAINWRIGHT: When you say 6 other regulated substances, you're not 7 talking about other chemicals other 8 than fuels? 9 MR. HARDY: Those that are 10 covered would be -- hazardous 11 substances are also regulated under 12 it. In addition to what you normally 13 consider automotive fuels, we do 14 regulate hazardous materials in 15 underground tanks and those would also 16 be included in the delivery 17 prohibition. 18 MR. WAINWRIGHT: I notice 19 there were no comments from any 20 source. 21 MR. HARDY: Yeah. We had the 22 public hearing on January the 4th, and 23 we received no commentary at the</p>

7 (Pages 22 to 25)

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1 hearing or during the comment period.
 2 MR. WAINWRIGHT: Okay. That's
 3 all -- all my questions. It just
 4 seems a little foggy to me.
 5 MR. PHILLIPS: All right. Do
 6 we have any other questions from the
 7 Commission?
 8 (No response.)
 9 MR. PHILLIPS: Thank you very
 10 much.
 11 I'll entertain a motion
 12 from the Commission for the adoption
 13 of proposed amendments to Division 6,
 14 Underground Storage Tank regulations.
 15 DR. GARDNER: So moved.
 16 MR. PHILLIPS: I have a
 17 motion. Do I have a second?
 18 MS. ARCHIE: Second.
 19 MR. PHILLIPS: I have a motion
 20 and a second. Any further discussion?
 21 (No response.)
 22 MR. PHILLIPS: All in favor
 23 signify by signing aye.

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1 (Commission members in favor of
 2 the motion so indicated.)
 3 MR. PHILLIPS: All opposed
 4 same sign.
 5 MR. WAINWRIGHT: Aye.
 6 MR. PHILLIPS: Motion carries.
 7 Moving to Agenda Item
 8 Number 6. This is an agenda item for
 9 reference dose and consideration of
 10 possible rulemaking. I would like to
 11 note that this is -- we had brought
 12 this item to be included on our April
 13 agenda, and it's been brought to my
 14 attention that we have a point of
 15 order that this is on our March
 16 agenda.
 17 Now that it's March,
 18 which is really February, we are
 19 waiting on a letter from EPA on this
 20 item; is that correct?
 21 MR. GLENN: Yes.
 22 MR. PHILLIPS: And we do hope
 23 to have that before our April meeting

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1 considering that we had originally had
 2 this for our April meeting. I'm going
 3 to ask that we table this item until
 4 April.
 5 Do I have a motion for
 6 that?
 7 MR. WAINWRIGHT: I so move.
 8 MR. PHILLIPS: I have a motion
 9 to table this item until our April
 10 meeting. Do I have a second?
 11 MS. ARCHIE: Second.
 12 MR. PHILLIPS: I have a motion
 13 and a second. Any further discussion?
 14 (No response.)
 15 MR. PHILLIPS: All in favor of
 16 the motion signify by signing aye.
 17 (Commission members in favor of
 18 the motion so indicated.)
 19 MR. PHILLIPS: All opposed
 20 same sign.
 21 (No response.)
 22 MR. PHILLIPS: Motion carries.
 23 Moving to Agenda Item

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1 Number 7, which is Black Warrior
 2 Riverkeeper versus ADEM and Birmingham
 3 Airport Authority. I just want to
 4 acknowledge that the petitioners
 5 withdraw their request for the
 6 hearing.
 7 Agenda Item Number 8,
 8 John Jordan, Sr. and John Jordan, Jr.,
 9 d/b/a Alabama Recycling versus ADEM.
 10 We have a request for oral arguments.
 11 We're going to allow those. However,
 12 I'm going to ask that you limit your
 13 oral arguments to no more than five
 14 minutes.
 15 MR. WHITE: Thank you
 16 Commissioners.
 17 If I might introduce
 18 myself, my name is Mike White. To the
 19 members of the Commission, I represent
 20 John Jordan, Jr. and not John Jordan,
 21 Sr. I think there is an error that
 22 Mr. Jordan, Sr. is included in this
 23 petition. It is an error that

8 (Pages 26 to 29)

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1 emanates from the law firm where I
 2 work having named -- or included his
 3 name on the petition for an appeal.
 4 And I think Mr. Knox McLaney, as a
 5 matter of fact, is counsel for
 6 Mr. Jordan, Sr. So he's filed a
 7 motion that is not before the
 8 Commission this morning, but he has
 9 asked that -- that be reconciled, and
 10 I'm here to represent to the Court
 11 that we do not represent
 12 Mr. Jordan, Sr., but rather we
 13 represent Mr. Jordan, Jr.
 14 What we have asked the
 15 Commission to consider and what we've
 16 objected to is an order dismissing our
 17 request for a hearing. Please
 18 understand that in this case there has
 19 been a fine levied against my client's
 20 business. We filed a timely request
 21 to have an appeal to have a hearing.
 22 That was assigned to an ALJ.
 23 So the technical issues

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1 came up, and I will admit that there
 2 were some technical deficiencies in
 3 the service of some of the pleadings.
 4 I notice a pleading
 5 defect was filed by the Department and
 6 a response was provided to that
 7 notice. The response was not send to
 8 the appropriate place. All of this
 9 was taking place in course of the
 10 holidays and our firm was forming. We
 11 were leaving the office of Jay Lewis
 12 and forming Anderson, Nelms &
 13 Associates. There was some confusion,
 14 and it just fell through the cracks to
 15 be perfectly honest with you. It was
 16 served in the -- to the lawyer
 17 representing the Department, but it
 18 was not served before the Commission.
 19 The administrative law
 20 judge issued an order giving us 10
 21 days to respond to it. A response was
 22 being prepared and, in fact, was filed
 23 before the 10 days expired. She also

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1 issued an order dismissing the case.
 2 And, therefore, we filed this
 3 objection to the Commission asking to
 4 be allowed that we would have a
 5 hearing.
 6 There's been no hearing.
 7 There's not a record that I can point
 8 to or site and provide you that are
 9 evidence or direct you to errors
 10 because we've not been given a chance
 11 to have that -- that evidentiary
 12 hearing. That's what we're asking to
 13 have. Notwithstanding the
 14 deficiencies of service, responses
 15 were prepared and were served. They
 16 just weren't filed in the Commission
 17 offices as well as the Department's
 18 offices. The confusion existed there.
 19 It was served on the opposing counsel
 20 for the Department but not counsel
 21 and/or the Commission.
 22 That's the crux of this
 23 case. That's why we're asking to be

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1 allowed an opportunity to have that
 2 hearing. At this point, my client
 3 stands facing a fine. He is a small
 4 business. He doesn't -- the only
 5 violation that's noted in the order
 6 that was issued by the Department is
 7 one in 1998. So 10 years ago,
 8 apparently there was a conflict or
 9 issue. So he's got 10 years with
 10 nothing being cited on his record
 11 according to the order issued by the
 12 Department.
 13 When there is a
 14 problem -- and by the way the furnace
 15 for which he was fined, an application
 16 for permit was filed, and it was
 17 issued about 67 days, I believe,
 18 thereafter. So he's facing a
 19 significant fine for a furnace which
 20 was properly permitted now by the
 21 Department.
 22 So that's one of the
 23 reasons we've asked to say we'd like

9 (Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1 an opportunity to have a hearing to 2 build a case, to put on evidence, to 3 put on information that might explain 4 this, and ask an ALJ to make a 5 recommendation based upon facts not 6 based upon a technicality. 7 And I acknowledge that 8 the devil lives in details. I live in 9 the details. We lawyers do. But in 10 this particular case, our client 11 unfortunately will face the severe 12 penalty of being denied the 13 opportunity of being heard because of 14 a miscalculation or a misdeed on the 15 part of my firm, which we certainly 16 didn't do on purpose. It was just an 17 oversight, an error. We've tried to 18 correct that by filing a pleading 19 evidencing that. Nevertheless, the 20 administrative law judge has 21 recommended a dismissal of our appeal. 22 So that's -- we're asking 23 for that hearing.</p>	<p style="text-align: right;">Page 36</p> <p>1 that rules on the -- the Department 2 doesn't rule on the pleadings; y'all 3 do. And that's why we have the rules 4 in place for that. 5 They -- they improperly 6 served the response. It wasn't 7 timely. The Department later filed a 8 motion to dismiss. The administrative 9 law judge granted the petitioners 10 10 days to respond. I believe it was 11 the same day they issued a response, 12 which I believe was correctly served 13 at that point. 14 The response, we allege, 15 is -- was inadequate. We later -- 16 and, of course, the administrative law 17 judge issued her -- her recommendation 18 for dismissal. We later filed -- and 19 we're -- excuse me. 20 They later filed a 21 response to our motion to dismiss, and 22 then we -- we filed a responsive 23 pleading saying that -- and keep in</p>
<p style="text-align: right;">Page 35</p> <p>1 MR. PHILLIPS: Thank you. 2 The Department. No more 3 than five minutes, please. 4 MR. SIBLEY: My name is Shawn 5 Sibley, and I represent the 6 Department. 7 Just in response to kind 8 of give the Commission a little bit of 9 a timeline, Alabama Recycling, John 10 Jordan, Jr. and John Jordan, Sr. filed 11 together through Mr. Nelms a petition 12 to appeal the administrative order 13 which assessed this penalty. That 14 petition was timely filed, and we 15 don't dispute that. The Department 16 later filed a notice of pleading 17 defects and the Department's attorney 18 received a response, just like 19 Mr. White said. 20 But at the tribunal -- 21 nor did the administrative receive -- 22 receive the actual pleading itself. 23 And, unfortunately, I'm not the one</p>	<p style="text-align: right;">Page 37</p> <p>1 mind, the rules don't provide for a 2 motion to reconsider. The petitioners 3 can only object to the hearing 4 officer's recommendation for 5 dismissal. So the hearing officer 6 dismissed or denied -- recommended 7 denial of that motion to reconsider, 8 and rightfully so because the rules 9 don't provide for that. 10 Mr. Nelms, on behalf of 11 Alabama Recycling, later filed a 12 properly -- an objection to the 13 hearing officer's recommendation to 14 deny their motion to reconsider. And 15 the reason I'm going through this is 16 because it's -- it is complex, and 17 it's hard to follow. The Department 18 did file a response. It was not 19 within the three days leading up to 20 February 22nd meeting, but -- and we 21 pointed that out. It wasn't in 22 compliance with the rules, because it 23 was untimely. It is timely now</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 because we're having this meeting on 2 the 20th. 3 In that -- in our 4 response, we point out again 5 Mr. Jordan did not give you an order 6 -- a proposed order. He did not give 7 you a proposed finding of facts. He 8 didn't lay out exactly what he wanted 9 to do other than just reinstate this 10 matter on the docket for hearing. 11 Now, you know the 12 Department's position, we're all for 13 everybody having their -- their time 14 in court, if you want to call this 15 tribunal a court. But you got to 16 comply with the rules. You got to 17 comply with the rules to get to that 18 point, and they did not do that. They 19 didn't comply with the rules and even 20 in their properly filed objections, 21 which is pretty much the last pleading 22 you received from them, they didn't -- 23 they still didn't comply with the</p>	<p style="text-align: right;">Page 40</p> <p>1 reason there's not a record cited to 2 the Commission in our objection is 3 that there's no record to appeal. So 4 the question then becomes, what do you 5 appeal to the Circuit Court. 6 Mr. Sibley is correct that there is an 7 appeal to the Circuit Court, but at 8 this point there's not a record to 9 appeal. That's what -- what we're 10 asking. 11 And Mr. Nelms, by the 12 way, is in court this morning. That's 13 why I'm here in his behalf asking for 14 an opportunity to develop that record. 15 Thank you. 16 MR. PHILLIPS: Any other 17 questions from the commission? 18 (No response.) 19 MR. PHILLIPS: Okay. Thank 20 you. I'll entertain a motion from the 21 Commission. We need to consider the 22 recommendation of the administration 23 law judge, so I look for a</p>
<p style="text-align: right;">Page 39</p> <p>1 rules. 2 So we're asking you to 3 follow the recommendation of the 4 administrative law judge. We think 5 she's correct in what she's 6 recommended that y'all do. 7 Thank you. If you have 8 any questions, I'll be glad to -- 9 MR. PHILLIPS: I'm going to 10 ask the Commission, do you have any 11 questions of either of these 12 gentlemen? 13 MR. WAINWRIGHT: And what's 14 their recourse if we uphold the 15 administrative law judge's decision? 16 MR. SIBLEY: They can appeal 17 your decision to Circuit Court. 18 MR. PHILLIPS: Any other 19 questions? 20 MR. WHITE: Could I respond to 21 that, sir? 22 The problem there is that 23 there's no record for us. The very</p>	<p style="text-align: right;">Page 41</p> <p>1 recommendation from the Commission. 2 MS. ARCHIE: I move we accept 3 the recommendation of the 4 administrative law judge -- 5 MR. PHILLIPS: I have a 6 motion. 7 MS. ARCHIE: -- to the 8 Commission. 9 MR. PHILLIPS: I have a motion 10 to accept the recommendation of the 11 administrative law judge. Do I have a 12 second? 13 DR. GARDNER: Second. 14 MR. PHILLIPS: I have a 15 second. Any additional discussion? 16 (No response.) 17 MR. PHILLIPS: No discussion. 18 All in favor of the motion to accept 19 the recommendation of the 20 administrative law judge to dismiss 21 the request for hearing signify by 22 signing aye. 23 (Commission members in favor of</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 the motion so indicated.) 2 MR. PHILLIPS: All opposed 3 same sign. 4 (No response.) 5 MR. PHILLIPS: Motion carries. 6 Moving on to Agenda Item 7 Number 9, other business. 8 Any other business to 9 come before the Commission? 10 (No response.) 11 MR. PHILLIPS: No other 12 business. We'll move to Agenda Item 13 Number 10, future business session. 14 I want to note that we 15 have a proposed date for the next 16 Commission meeting of April the 18th, 17 2008, and I want to confirm with at 18 least the four of you can attend that 19 meeting -- or the three of you. 20 DR. GARDNER: As far as I 21 know. 22 MR. PHILLIPS: Debi, do we 23 have any others that have a problem</p>	<p style="text-align: right;">Page 44</p> <p>1 (Commission members in favor of 2 the motion so indicated.) 3 MR. PHILLIPS: All opposed. 4 (No response.) 5 MR. PHILLIPS: Motion carries. 6 Thank you. 7 (Meeting adjourned.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>
<p style="text-align: right;">Page 43</p> <p>1 with that date? 2 MS. THOMAS: Not that I'm 3 aware of. 4 MR. PHILLIPS: All right. The 5 meeting will be set for April 18th, 6 2008. 7 MS. ARCHIE: One question 8 Mr. Chairman. 9 MR. PHILLIPS: Absolutely. 10 MS. ARCHIE: What time is that 11 meeting? 12 MR. PHILLIPS: It will be 13 11:00 a.m. 14 MS. ARCHIE: Thank you. 15 MR. PHILLIPS: You're welcome. 16 I need a motion to 17 adjourn. 18 DR. GARDNER: So moved. 19 MR. PHILLIPS: Do I have a 20 second? 21 MR. WAINWRIGHT: Second. 22 MR. PHILLIPS: All in favor 23 signify by signing aye.</p>	<p style="text-align: right;">Page 45</p> <p>1 2 ***** 3 REPORTER'S CERTIFICATE 4 ***** 5 6 I, Mishan Williamson, Certified 7 Shorthand Reporter and Notary Public 8 in and for the State of Alabama at 9 Large, do hereby certify that I 10 reported stenographically and then 11 reduced to typewritten form by means 12 of computer-aided transcription my 13 stenographic notes of the foregoing 14 Alabama Environmental Management 15 Commission Meeting. 16 17 I further certify that the 18 foregoing transcript is a true and 19 correct transcript of the proceedings 20 contained herein. 21 22 I further certify that I am 23 neither of kin nor of counsel to the</p>

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1 parties to said meeting, nor in any
2 manner interested in the results
3 thereof.
4

5 Done this 24th day of March,
6 2008.
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10 Mishan Williamson, ACCR# 417
11 Reporter and Notary Public
12 State of Alabama at Large
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10 Mishan Williamson, ACCR# 417
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<p>A</p> <p>ability 21:17 23:18</p> <p>able 6:19</p> <p>Absolutely 43:9</p> <p>accept 41:2,10,18</p> <p>accompanied 11:7</p> <p>accomplished 12:23</p> <p>accountability 10:10 11:8</p> <p>ACCR 46:10</p> <p>acknowledge 3:4 29:4 34:7</p> <p>act 19:5 22:1 23:23</p> <p>actions 11:16 22:3</p> <p>active 7:2</p> <p>activities 6:16</p> <p>actual 35:22</p> <p>added 11:12 20:16</p> <p>addition 10:13 21:1 25:12</p> <p>additional 7:19 41:15</p> <p>ADEM 1:20 2:13 2:15,19 5:11 6:8 6:16 7:6 9:9 11:17 12:1 18:22 20:13 29:2,9</p> <p>adjourn 43:17</p> <p>adjourned 2:22 44:7</p> <p>administrate 39:4</p> <p>administration 40:22</p> <p>administrative 2:13 4:14 31:19 34:20 35:12,21 36:8,16 39:15 41:4,11,20</p> <p>admit 31:1</p> <p>adopt 22:8,11</p> <p>adoption 3:11 18:16 26:12</p> <p>advantage 8:12</p>	<p>aerial 12:1,20</p> <p>Affairs 5:7,17</p> <p>afforded 23:15</p> <p>after-the-fact 12:22</p> <p>agencies 21:16</p> <p>agenda 3:6 4:5 13:14,22 18:14 27:7,8,13,16 28:23 29:7 42:6 42:12</p> <p>ago 33:7</p> <p>aimed 22:18,20</p> <p>Airport 2:15 29:3</p> <p>Alabama 1:1,4,6,8 2:18 7:16 13:4 29:9 35:9 37:11 45:8,14 46:11</p> <p>ALJ 30:22 34:4</p> <p>allege 36:14</p> <p>allow 10:9,23 12:21 24:2 29:11</p> <p>allowed 32:4 33:1</p> <p>amendments 2:11 18:16 26:13</p> <p>Anderson 31:12</p> <p>and/or 32:21</p> <p>ANITA 1:14</p> <p>announce 5:10 7:16</p> <p>answer 13:5,20 21:6</p> <p>apparently 33:8</p> <p>appeal 30:3,21 34:21 35:12 39:16 40:3,5,7,9</p> <p>Appendix 2:13</p> <p>application 33:15</p> <p>apply 24:18</p> <p>appreciate 4:10 5:22 11:18 13:3</p> <p>approach 11:1</p> <p>appropriate 7:9 9:19 10:4 31:8</p> <p>April 27:12,23 28:2 28:4,9 42:16 43:5</p> <p>Archie 1:14 12:17</p>	<p>16:9 26:18 28:11 41:2,7 43:7,10,14</p> <p>area 5:16</p> <p>areas 6:9 8:8</p> <p>arguments 29:10 29:13</p> <p>asked 30:9,14 33:23</p> <p>asking 32:3,12,23 34:22 39:2 40:10 40:13</p> <p>assessed 35:13</p> <p>asset 12:4</p> <p>assigned 30:22</p> <p>ASSISTANT 1:22</p> <p>associated 9:4 12:9 12:19</p> <p>Associates 31:13</p> <p>assurance 10:18 11:9</p> <p>attend 6:19 42:18</p> <p>attended 6:2</p> <p>attention 27:14</p> <p>attorney 35:17</p> <p>auditing 11:8</p> <p>audits 11:15</p> <p>August 17:10,21</p> <p>authority 2:16 19:8 29:3</p> <p>authorize 15:20 16:6</p> <p>automotive 25:13</p> <p>aware 43:3</p> <p>awful 21:15</p> <p>aye 3:21 15:12 16:14 26:23 27:5 28:16 41:22 43:23</p> <p>a.m 1:9 43:13</p> <p>B</p> <p>back 7:6 9:17 10:3 17:8,13,20 18:6,6</p> <p>ban 22:12</p> <p>based 34:5,6</p> <p>basis 11:7</p>	<p>began 17:3</p> <p>behalf 37:10 40:13</p> <p>believe 18:3 33:17 36:10,12</p> <p>benefit 17:5</p> <p>better 10:10</p> <p>bill 7:15,17</p> <p>Birmingham 2:15 29:2</p> <p>bit 35:8</p> <p>Black 2:15 29:1</p> <p>blends 25:3</p> <p>board 12:7</p> <p>bottom 10:11</p> <p>Boulevard 1:7</p> <p>branch 9:11</p> <p>bring 17:20</p> <p>brought 5:5 27:11 27:13</p> <p>budget 4:22 7:1,4</p> <p>build 34:2</p> <p>Building 1:5</p> <p>business 2:20,21 21:17 30:20 33:4 42:7,8,12,13</p> <p>C</p> <p>CAFO/AFO 8:5</p> <p>call 3:2 18:18 38:14</p> <p>called 6:17 7:12</p> <p>carries 4:4 15:18 16:20 27:6 28:22 42:5 44:5</p> <p>case 23:21 30:18 32:1,23 34:2,10</p> <p>Center 5:15</p> <p>certain 8:10</p> <p>certainly 34:15</p> <p>CERTIFICATE 45:3</p> <p>Certified 45:6</p> <p>certify 45:9,17,22</p> <p>Chair 1:12 13:16 16:6 18:7</p> <p>Chairman 14:1,4</p>	<p>16:21 18:2 21:12 43:8</p> <p>challenges 5:4 11:23</p> <p>chance 11:2 32:10</p> <p>changes 10:14 12:6 12:7 17:22</p> <p>Chapter 2:13</p> <p>chemicals 24:19 25:7</p> <p>Chief 18:21</p> <p>Chip 9:16</p> <p>Circuit 39:17 40:5 40:7</p> <p>cited 33:10 40:1</p> <p>clear 12:21</p> <p>clearly 10:7</p> <p>client 33:2 34:10</p> <p>client's 30:19</p> <p>Coalition 6:14</p> <p>Code 2:13</p> <p>Coliseum 1:7</p> <p>collaboration 6:10</p> <p>combine 8:13</p> <p>combined 6:7</p> <p>come 42:9</p> <p>comes 12:12</p> <p>coming 4:18</p> <p>comment 26:1</p> <p>commentary 25:23</p> <p>comments 18:19 25:19</p> <p>commission 1:2,11 1:15 3:4,11,22 13:10,15 14:14 15:13 16:15 17:21 21:10 26:7,12 27:1 28:17 29:19 30:8,15 31:18 32:3,16,21 35:8 39:10 40:2,17,21 41:1,8,23 42:9,16 44:1 45:15</p> <p>Commissioner 2:3 2:8 12:17</p>
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Part B

Attachment Index

- Attachment 1** **Agenda**
- Attachment 2** **Order on the adoption of a motion to receive the Director's Evaluation Forms and the Summary**
- (Agenda Item 4 – Consideration of motion and discussion on proposed Final Director's 2007 Performance Evaluation)**
- Attachment 3** **Order on the adoption of a motion to authorize the Chair to review the results of the Director's Evaluations Forms with the Director and to execute the understanding between the Chair and the Director regarding the results of the Evaluation Forms**
- (Agenda Item 4 – Consideration of motion and discussion on proposed Final Director's 2007 Performance Evaluation)**
- Attachment 4** **Resolution on the adoption of amendments to the Division 6 - Underground Storage Tank Regulations**
- (Agenda Item 5 – Consideration of adoption of proposed amendments to the Division 6 – Underground Storage Tank Regulations)**
- Attachment 5** **Order on adoption of a motion to table Agenda Item Number 6 until the April Commission Meeting**
- (Agenda Item 6 – Discussion of ADEM Admin. Code Chapter 335-6-10, Appendix A [Reference Doses] and consideration of possible future rulemaking to amend said rule [NPDES-Related Matter])**
- Attachment 6** **Order on the granting of the Petitioners' request for oral argument, the adoption of the Recommendations of the Administrative Law Judge, and the dismissal of the request for hearing filed by the Petitioners**
- (Agenda Item 8 – John Jordan, Sr. and John Jordan, Jr., d/b/a Alabama Recycling v. ADEM, EMC Docket No. 08-03)**

Attachment 1

3/3/08

AGENDA*

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING

Alabama Department of Environmental Management (ADEM) Building

Alabama Room (Main Hearing Room)

1400 Coliseum Boulevard

Montgomery, Alabama

Thursday, March 20, 2008

9:00 a.m.

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4. Consideration of motion and discussion on proposed Final Director's 2007 Performance Evaluation	2
5. Consideration of adoption of proposed amendments to the Division 6 – Underground Storage Tank Regulations	2
6. Discussion of ADEM Admin. Code Chapter 335-6-10, Appendix A (Reference Doses) and consideration of possible future rulemaking to amend said rule (NPDES-Related Matter)	2
7. Black Warrior Riverkeeper, Inc. v. ADEM, and Birmingham Airport Authority, Intervenor EMC Consolidated Docket Nos. 07-08, 07-09, and 07-10 (NPDES-Related Matter)	3
8. John Jordan, Sr. and John Jordan, Jr., d/b/a Alabama Recycling v. ADEM EMC Docket No. 08-03	3
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*The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under EMC Information and Calendar of Events.

**The Minutes for this meeting will be available on the ADEM website under EMC Information.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON DECEMBER 14, 2007
2. REPORT FROM THE DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF MOTION AND DISCUSSION ON PROPOSED FINAL DIRECTOR'S 2007 PERFORMANCE EVALUATION

The Commission's Personnel Committee will recommend and the Commission will discuss and consider a motion on a proposed Final Director's Performance Evaluation for the 2007 annual review period for adoption by the Commission along with a recommendation that the Commission delegate to the Commission Chair the authority to sign the final evaluation on behalf of the Commission and present it to the Director for signature.

5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO THE DIVISION 6 – UNDERGROUND STORAGE TANK REGULATIONS

The Commission will consider proposed amendments to the Division 6 – Underground Storage Tank Regulations. The Department proposes to amend Chapter 335-6-15 to provide updated regulations to meet the requirements of the Secondary Containment Provisions of the Federal Energy Policy Act of 2005 and other necessary updates. The Department held a public hearing on the proposed amendments on January 4, 2008.

6. DISCUSSION OF ADEM ADMIN. CODE CHAPTER 335-6-10, APPENDIX A, (REFERENCE DOSES) AND CONSIDERATION OF POSSIBLE FUTURE RULEMAKING TO AMEND SAID RULE (NPDES-RELATED MATTER)

The Commission will discuss which EPA sources to use to set reference dose values for toxic substances in ADEM Admin. Code Chapter 335-6-10, Appendix A, including those for Acrolein and Phenol, and consider a motion on possible future rulemaking to amend said rule.

7. BLACK WARRIOR RIVERKEEPER, INC. V. ADEM, AND BIRMINGHAM AIRPORT AUTHORITY, INTERVENOR, EMC CONSOLIDATED DOCKET NOS. 07-08, 07-09, AND 07-10 (NPDES-RELATED MATTER)

The Commission will acknowledge the Petitioner's withdrawal of the requests for hearing in the matters of the issuance of Consent Order 07-155-CMNPS to Dunn Construction Company, Inc., Consent Order 07-156-CMNPS to Birmingham Airport Authority, and Consent Order 07-157-CMNPS to APAC-Southeast, Inc., Alabama Division, for the Birmingham Airport Runway Extension, Jefferson County.

8. JOHN JORDAN, SR. AND JOHN JORDAN, JR., D/B/A ALABAMA RECYCLING V. ADEM, EMC DOCKET NO. 08-03

The Commission will first consider Petitioner John Jordan, Jr., d/b/a Alabama Recycling's request for oral argument. If the request for oral argument is granted, the Commission will hear oral argument on the objections to the Recommendations of the Administrative Law Judge raised by Petitioner John Jordan, Jr., d/b/a Alabama Recycling in the "Objection to Recommendations of the Administrative Law Judge" and from the Department on the responses to the Petitioners' objections raised in the "Response to Petitioners' Objection to Recommendation of the Administrative Law Judge."

After hearing oral argument or denying the request for oral argument, the Commission will consider the Recommendation of the Administrative Law Judge to deny the Petitioners' motion to reconsider dismissal and the Recommendation of the Administrative Law Judge to dismiss the Petitioners' appeal of the issuance of ADEM Administrative Order 08-047-AP to John Jordan, Sr. and John Jordan, Jr., d/b/a Alabama Recycling, Montgomery, Montgomery County, Air Facility No. 209-0094.

9. OTHER BUSINESS
10. FUTURE BUSINESS SESSION

Attachment 2

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Receive the Director's Evaluation Forms and the Summary

ORDER


This cause having come before the Environmental Management Commission pursuant to the above motion, and the Commission having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the above motion is hereby adopted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

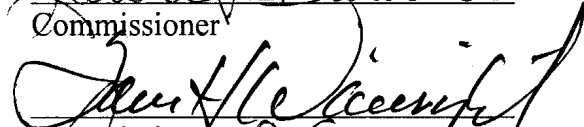
Environmental Management Commission Order
Page 2

ISSUED this 20th day of March 2008.

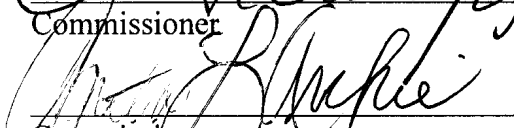
APPROVED:


Commissioner

Commissioner


Commissioner

Commissioner


Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

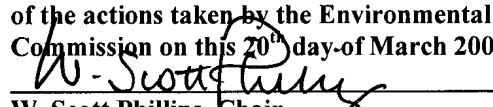
ABSTAINED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account
of the actions taken by the Environmental Management
Commission on this 20th day of March 2008.


W. Scott Phillips, Chair
Environmental Management Commission
Certified this 20th day of March 2008.

Attachment 3

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Authorize Chair to review the results of the Director's Evaluation Forms with the Director
and to execute the understanding between the Chair and the Director regarding
the results of the Evaluation Forms

ORDER

This cause having come before the Environmental Management Commission pursuant to
the above motion, and the Commission having considered the same, the Commission hereby
ORDERS, ADJUDGES, and DECREES as follows:

1. That the above motion is hereby adopted; and
2. That this action has been taken and this Order shall be deemed rendered effective
as of the date shown below.

Environmental Management Commission Order
Page 2

ISSUED this 20th day of March 2008.

APPROVED:

Laurel S. Gardner
Commissioner

Commissioner

Scottie King
Commissioner

Commissioner

John A. Lurie
Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account
of the actions taken by the Environmental Management
Commission on this 20th day of March 2008.

W. Scott Phillips
W. Scott Phillips, Chair
Environmental Management Commission
Certified this 20th day of March 2008.

Attachment 4

ENVIRONMENTAL MANAGEMENT COMMISSION RESOLUTION

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code Chapter 335-6-15 of the Department's Water Division – Water Quality Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.



NOW THEREFORE, pursuant to Ala. Code §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-6 [rules 335-6-15-.02/Definitions (Amend); 335-6-15-.04/Interim Prohibition for Deferred UST Systems (Amend); 335-6-15-.05/Notification Requirements (Amend); 335-6-15-.06/Performance Standard for New USTs, Piping, UST Systems, and/or Dispensers (Amend); 335-6-15-.11/Compatibility (Amend); 335-6-15-.13/Reporting and Recordkeeping (Amend); 335-6-15-.14/General Release Detection Requirements for All UST Systems (Amend); 335-6-15-.15/Release Detection Requirements for Petroleum UST Systems (Amend); 335-6-15-.17/Methods of Release Detection for Tanks (Amend); 335-6-15-.24/Initial Release Response (Amend); 335-6-15-.29/Corrective Action Plan (Amend); 335-6-15-.31/Public Participation (Amend); 335-6-15-.45/Delivery Prohibition (New); and 335-6-15-.46/Severability (Amend)] of the Department's Water Quality Program administrative code attached hereto, to become effective thirty-five days after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

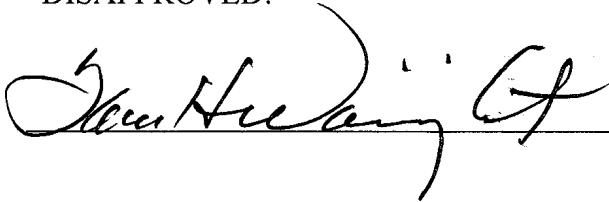
Revisions to ADEM Admin. Code chapter 335-6-15
Technical Standards, Corrective Action Requirements and Financial Responsibility for Owners
and Operators of Underground Storage Tanks

IN WITNESS WHEREOF, we have affixed our signatures below on this 20th day of
March 2008.

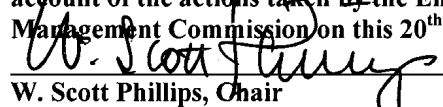
APPROVED:

DISAPPROVED:



This is to certify that this Resolution is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 20th day of March 2008.


W. Scott Phillips, Chair
Environmental Management Commission
Certified this 20th day of March 2008.

Attachment 5

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Table Agenda Item Number 6 until the April Commission Meeting

ORDER

This cause having come before the Environmental Management Commission pursuant to the above motion, and the Commission having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the above motion is hereby adopted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

Page 2

ISSUED this 20th day of March 2008.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 20th day of March 2008.

W. Scott Phillips, Chair
Environmental Management Commission
Certified this 20th day of March 2008.

Attachment 6

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

JOHN JORDAN, SR. and
JOHN JORDAN, JR., d/b/a
ALABAMA RECYCLING,

Petitioners,

v.

THE ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Respondent.

EMC DOCKET NO. 08-03

[Administrative Action: ADEM Administrative Order 08-047-AP issued to John Jordan, Sr. and John Jordan, Jr., d/b/a Alabama Recycling, Montgomery, Montgomery County, Air Facility ID No. 209-0094]

ORDER

This cause having come before the Environmental Management Commission pursuant to the Recommendations of the Administrative Law Judge in the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

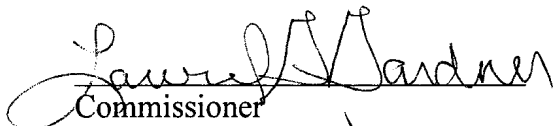
1. That consideration has been given to Petitioners' Objection to Administrative Law Judge's Recommendation to Deny Petitioners' Motion to Reconsider and the Department's Response; and
2. That Petitioners' request for oral argument is granted.
3. That the Recommendation of the Administrative Law Judge denying Petitioners' Motion to Reconsider Dismissal is hereby adopted; and
4. That the Recommendation of the Administrative Law Judge to Dismiss this hearing request is hereby adopted; and
5. That pursuant to consideration of Petitioners' Objection, the Department's Response, and adoption of both Recommendations of the Administrative Law

Judge, the Commission hereby dismisses this request for hearing filed by the Petitioners; and

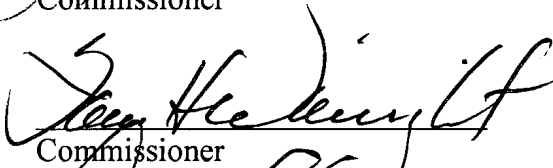
6. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
7. That a copy of this Order shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.

ISSUED this 20th day of March 2008.

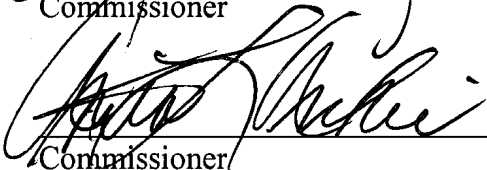
APPROVED:


Commissioner

Commissioner


Commissioner

Commissioner


Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

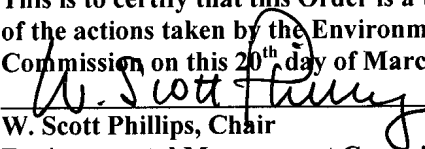
Commissioner

Commissioner

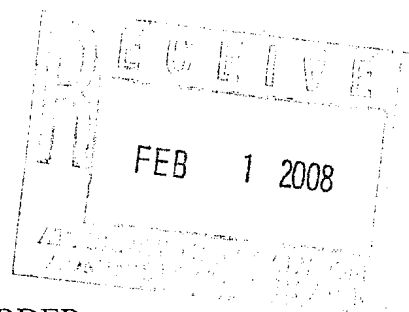
ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 20th day of March 2008.


W. Scott Phillips, Chair
Environmental Management Commission
Certified this 20th day of March 2008.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



IN THE MATTER OF:)

JOHN JORDAN, SR. and JOHN)
JORDAN, JR., d/b/a ALABAMA)
RECYCLING,)

ADMINISTRATIVE ORDER
NO:08-047-AP

MONTGOMERY, MONTGOMERY)
COUNTRY, AL)

AIR FACILITY ID No. 209-0094)



MOTION TO RECONSIDER ORDER

COMES NOW, John Jordan Jr., d/b/a Alabama Recycling (hereinafter, "Alabama Recycling") by and through its counsel of record, and files this Motion to Reconsider Order of January 30th dismissing Petitioner's appeal. In support of this Motion, Alabama Recycling states as follows:

1. On January 10, 2008, the Alabama Department of Environmental Management (hereinafter, "Department") received a copy of Alabama Recycling's "Response to Notice of Pleading Defects" (hereinafter, "Petitioner") (Attached hereto as "Exhibit A").

2. Department filed a Motion to Dismiss on January 14, 2008, arguing that in Petitioner's Response to Notice of Pleading Defects, Petitioner did not serve all proper parties, and therefore, this Administrative Law Judge should dismiss the case. (Attached hereto as "Exhibit B").

3. This Administrative Law Judge granted Department's Motion to Dismiss on January 30, 2008. (Attached hereto as "Exhibit C").

DENIED

Petitioner has failed to show that omitted parties were in fact originally served. J. B. Des 7-6-08

BEFORE THE ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

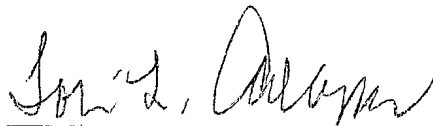
JOHN JORDAN, SR. and)	OAH-08-003
JOHN JORDAN, JR. d/b/a/)	
ALABAMA RECYCLING,)	EMC DOCKET NO. 08-03
)	[Administrative Action: ADEM
Petitioners,)	Administrative Order 08-047-AP
)	issued to John Jordan, Sr. and
v.)	John Jordan, Jr., d/b/a Recycling,
)	Montgomery, Montgomery County,
THE ALABAMA DEPARTMENT OF)	Air Facility ID No. 209-0094]
ENVIRONMENTAL MANAGEMENT,)	
)	
Respondent.)	

DISMISSAL ORDER

Upon consideration of the Motion to Dismiss filed by ADEM on January 15, 2008 and the Petitioners' Response filed on January 22, 2008, it is hereby recommended that the appeal of ADEM's administrative action in this case be dismissed pursuant to Sections 335-2-1-.04(7) and 335-2-1-.21(4), ADEM, Administrative Code, due to the improper service of the Petitioners' Response to Notice of Pleading Defects.

DONE this the 30th day of January, 2008.





Tori L. Adams
Administrative Law Judge
Administrative Hearings
11 South Union Street
Montgomery, AL 36130
Telephone: 334-242-7433
Fax: 334-353-9050

cc: Ms. Debi Thomas, Executive Assistant
Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36130-1463
Telephone: 334-271-7706
Fax: 334-279-3052
(State Hand Mail)

S. Shawn Sibley, Esquire
Mary-Frank Brown, Esquire
Counsel for Alabama Department of Environmental Management
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